IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6207 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASANTIBEN CHHAGANBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR BA SURTI for Petitioner(s) : 1,
MR LR PUJARI, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
None for Respondent(s) : 2.2.1,2.2.2 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/04/2007

ORAL JUDGMENT

1. Shri B.A. Surti, learned counsel for the petitioner; Shri L.R. Pujari, learned AGP for the respondent no.1; none for the respondents no.2,3 and 4.
2. The short facts necessary for disposal of this writ application are that one Chhaganlal, son of Ambubhai Patel purchased 6 Acres and 5 Gunthas land of block no. 460 under registered sale deed for consideration of Rs. 44,999/- from the respondents no. 2 and 3. On 20.8.81, name of Chhaganlal Ambubhai Patel was mutated in the record of rights. Somewhere in 1984, Mamlatdar cum ALT initiated suo motu proceedings under Section 84C and registered case No. 198/84.
3. Appropriate notice was issued to the said Chhaganlal Ambubhai, notices were served upon Chhaganlal Ambubhai in June, 1983, but he left for his heavenly abode on 21.10.1983. The Mamlatdar cum AlT, after verifying from the revenue records, found that vide entry no. 2945 dated 10.12.83, names of Lalitaben, the respondent no.4, daughter of Chhaganlal Patel and Vasantiben, daughter of Chhaganlal Patel [petitioner] were mutated, but on the very same day, by next entry no. 2946, name of Vasantiben

was deleted, Mamlatdar cum ALT accordingly issued notice to Lalitaben though Vasantiben was also joined as party to the proceedings. The proceedings remained pending for long time and the original Tenancy Case No. 198/84 was renumbered as Tenancy Case No. 20 of 1989. On 20.1.90, Mamlatdar cum ALT held that father of the present petitioner was not an agriculturist and as such, sale effected in his favour was void.

4. It is to be noted that being aggrieved by the said order dated 20.1.90, the present petitioner and respondent no.4 filed Tenancy Appeal No. 8/90, which, however, came to be dismissed on 22.5.90.

5. Both the sisters filed Revision Application No. TEN.B.S. 134 of 1990 before the Gujarat Revenue Tribunal, but vide order dated 29.7.94, the same was dismissed. Still dissatisfied, both the sisters filed Review Application No. TEN.C.S. No. 12 of 1994, but the same was also dismissed on 30.12.94.

6. Present petition now has been filed by

Vasantiben, daughter of Chhaganlal Ambubhai Patel and her sister Lalitaben is shown as party respondent no.4, meaning thereby that, Lalitaben was not interested in joining as petitioner or she was satisfied and content with the order passed by Gujarat Revenue Tribunal and the other revenue authorities.

7. Shri Surti, learned counsel for the petitioner submits that in pursuance of notice to Vasantiben, proceedings were initiated. His submission is that the revenue authorities, specially, Mamlatdar cum ALT had taken wrong view of the matter by holding that Chhaganlal Patel was not an agriculturist. His submission is that the documents annexed with this writ application would show that Chhaganlal Ambubhai Patel was recorded as agriculturist and as such, he could purchase the land in dispute. His submission is that Vasantiben, the present petitioner was not given proper opportunity, she could not lead appropriate evidence to show that the sale was effected by the sellers in favour of Chhaganlal A. Patel, who happened to

be a bona fide agriculturist.

8. Learned counsel for the State has opposed the writ application.

9. Undisputely, Lalitaben who was served with the notice, after death of her father, did not take part in the proceedings nor led any evidence to convince the Mamlatdar cum ALT that her father was bona fide agriculturist and he was entitled to purchase the land in accordance with revenue laws.

10. It is also not in dispute that entry no. 2945 mutating the names of both the sisters was made on 10.12.83, but on the very same day, by yet another entry no. 2946, name of Vasantiben was deleted. Once name of Vasantiben was deleted and the revenue authorities refused to recognize her as successor of deceased Chhaganlal Ambubhai Patel, then, there was no need to issue any notice to her. In any case, entry no. 2946 dated 10.12.83 deleting the name of the petitioner ought to have been challenged by the petitioner before the appropriate forum and authority. If effect and impact flowing from entry no. 2946

are not challenged by the present petitioner right from 1983 up to the date of disposal of the revision by the Revenue Tribunal, or even thereafter till date, this Court must hold that she was never interested in challenging the entry no. 2946 dated 10.12.83. One could understand the conduct of the petitioner that after the orders were passed by the Gujarat Revenue Tribunal on strength of entry no. 2946, dated 10.12.83, the petitioner had challenged the correctness and validity of the said entry. On being asked that even after the orders were passed by the Gujarat Revenue Tribunal, had the petitioner challenged the effect of the said entry or not, Shri Surti submits that till date, entry no. 2946 dated 10.12.83 has not been challenged by the petitioner in a duly constituted Civil Suit seeking partition of the property left by her late father. The inaction/non-action on the part of the petitioner would compel the Court to believe that she was not interested in challenging the entry no. 2946, she was happy and content that

the land was rightly recorded in the name of the respondent no.4.

11. Once it is held that Vasantiben was not a recorded holder, there was no need to issue any notice to her. Even otherwise, when her sister was contesting theh litigation, it is hard to believe that she did not know about the pendency of the proceedings in view of the fact that in the appeal, revision and review, she was joined as co-appellant/applicant.

12. Once it is held that the petitioner has no right, title or interest in the property, then, she cannot be allowed to challenge the orders passed by the subordinate Tribunal or Gujarat Revenue Tribunal. Lalitaben, who could successfully challenge the order passed by the subordinate authority, preferably with the additional evidence which has been filed in these proceedings, is not joined as party petitioner. If Lalitaben did not propose to lead any evidence, then, Vasantiben, who would virtually be a third party would not be allowed to throw a challenge to the orders passed by the

Revenue Officer or the Gujarat Revenue Tribunal.

13. Shri Surti last submitted that the revenue entries are for fiscal purposes and therefore no importance should be attached to them. Ordinarily, the submission made by Shri Surti would be correct, but in the facts of the present case, the question of notice, when is required to be decided, then, notice would only be issued to the person who is recorded as successor or tenant. When there is a dispute between the recorded owner and someone else who claims rights in the property, then, the plea of “fiscal purposes” would be available to the party challenging the entry, but not in case like present.

14. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

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